



California Regional Water Quality Control Board

Santa Ana Region



Linda S. Adams
Secretary for
Environmental Protection

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Arnold Schwarzenegger
Governor

November 8, 2007

Susan Brodeur
Resources & Development Management Dept.
County of Orange
300 North Flower Street
Santa Ana, CA 92702-4048

CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS CERTIFICATION FOR THE PROPOSED MAINTENANCE DREDGING OF NEWPORT DUNES, CITY OF NEWPORT BEACH (ACOE REFERENCE NO. SPL – 2006 – 2112 – DPS)

Dear Ms. Brodeur:

On November 14, 2006, we received an application from the County of Orange for Clean Water Act Section 401 Water Quality Standards Certification (Certification) for the proposed maintenance dredging of Newport Dunes in the City of Newport Beach. On April 6, 2007, we received a requested draft environmental analysis of the project, prepared pursuant to the California Environmental Quality Act (CEQA). This letter responds to your request for certification that the proposed project, described in your application and summarized below, will comply with State water quality standards outlined in the Water Quality Control Plan for the Santa Ana River Basin (1995) and subsequent Basin Plan amendments:

Project Description: Dredging of approximately 177,000 cubic yards of sediments from Newport Dunes in Upper Newport Bay in the City of Newport Beach. Dredge materials will be disposed of at LA-3, a USEPA-approved off-shore disposal site. Navigational channels, shoaled areas under docks, the swimming lagoon, and areas adjacent to storm drains will be dredged to depths varying from -7 feet Mean Lower Low Water (MLLW) to -8 feet MLLW. The total project area is 35 acres. The site is located within Section 26 of Township 6 South, Range 10 West of the U.S. Geological Survey *Newport Beach, California*, 7.5-minute topographic quadrangle maps (33.617 degrees N/117.893 degrees W).

Receiving water: Upper Newport Bay.

Fill area: Not Applicable.

California Environmental Protection Agency



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Dredge/Fill volume: 177,000 cubic yards.

Federal permit: U.S. Army Corps of Engineers Permit No. SPL – 2006 – 2112 – DPS.

Should the proposed project impact state- or federally-listed endangered species or their habitat, implementation of measures identified in consultation with U.S. Fish and Wildlife Service and the California Department of Fish and Game will ensure those impacts are mitigated to an acceptable level.

You have applied for an Individual Permit from the U.S. Army Corps of Engineers in compliance with Section 404 of the Clean Water Act. You have applied for a Coastal Development Permit from the Coastal Commission. Pursuant to the California Environmental Quality Act (CEQA), the County of Orange adopted a Mitigated Negative Declaration on October 2, 2007. The Executive Officer has considered the Mitigated Negative Declaration in the issuance of this Certification.

This Certification expires on December 31, 2008. However, in the event of project delays, this Certification is subject to a one-time, one-year extension by the Executive Officer.

This 401 Certification is contingent upon the execution of the following conditions:

1. Using generally accepted protocols, the discharger shall survey for *Caulerpa taxifolia*, an invasive marine seaweed, to help locate and prevent its spread. If *Caulerpa taxifolia* is found prior to or during implementation of the project, the applicant shall not begin or continue at that location until authorized by Regional Board staff. If the invasive seaweed is discovered, it is not to be disturbed, and the Regional Board shall be notified within 48-hours of the location and date of the discovery. In addition, any sightings of *Caulerpa taxifolia* should be reported to the California Department of Fish and Game (William Paznokas at (858) 467-4218 (wpaznokas@dfg.ca.gov)) or the National Marine Fisheries Service (Robert Hoffman at (562) 980-4043 (bob.hoffman@noaa.gov)) within 24-hours of discovery. Further information regarding *Caulerpa taxifolia* sightings can be obtained at www.sccat.net. Should no *Caulerpa* be observed during the project, the applicant shall notify the Regional Board of this fact when all construction has been completed. Wanda Cross of this office, at (951) 782-4468, is the Regional Board staff contact concerning issues related to *Caulerpa taxifolia*.
2. Materials shall not be placed in a manner where they could be discharged to surface waters except as authorized by this certification. In the event that trash or debris is discharged to surface waters, the discharger shall recover the material to the maximum extent practical.
3. Project-related activities shall not cause the background natural turbidity, as measured in Nephelometric Turbidity Units (NTUs), in the receiving waters to be increased by

values greater than the following Basin Plan objectives at a distance of 100 feet from the activity:

- a. If natural turbidity is between 0 and 50 NTU, the maximum increase shall not exceed 20% of the measured natural turbidity.
- b. If natural turbidity is 50 to 100 NTU, the increase shall not exceed 10 NTU.
- c. If natural turbidity is greater than 100 NTU, the maximum increase shall not exceed 10% of the measured natural turbidity.

Under California Water Code, Section 1058, and Pursuant to 23 CCR §3860, the following shall be included as conditions of all water quality certification actions:

- (a) Every certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Section §13330 of the Water Code and Article 6 (commencing with Section 3867) of this Chapter.
- (b) Certification is not intended and shall not be construed to apply to any activity involving a hydroelectric facility and requiring a FERC license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to Subsection §3855(b) of this Chapter and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
- (c) Certification is conditioned upon total payment of any fee required under this Chapter and owed by the applicant.

Although we anticipate no further regulatory involvement, if the above stated conditions are changed, any of the criteria or conditions as previously described are not met, or new information becomes available that indicates a water quality problem, we may formulate Waste Discharge Requirements.

In the event of any violation or threatened violation of the conditions of this certification, the violation or threatened violation shall be subject to any remedies, penalties, process or sanctions as provided for under state law. For purposes of section 401(d) of the Clean Water Act, the applicability of any state law authorizing remedies, penalties, process or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this certification.

In response to a suspected violation of any condition of this certification, the Santa Ana Regional Water Quality Control Board (Regional Board) may require the holder of any permit or license subject to this certification to furnish, under penalty of perjury, any technical or monitoring reports the Regional Board deems appropriate. The burden, including costs, of the reports shall be reasonable in relation to the need for the reports and the benefits to be obtained from the reports.

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In response to any violation of the conditions of this certification, the Regional Board may add to or modify the conditions of this certification as appropriate to ensure compliance. Pursuant to California Code of Regulations Section 3857, we will take no further action on your application. Please notify our office five (5) days before construction begins on this project.

This letter constitutes a Water Quality Standards Certification issued pursuant to Clean Water Act Section 401. I hereby issue an order certifying that any discharge from the referenced project will comply with the applicable provisions of Sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards) of the Clean Water Act, and with other applicable requirements of State law. This discharge is also regulated under State Water Resources Control Board Order No. 2003-0017-DWQ (Order No. 2003-0017-DWQ), "General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received Water Quality Certification" which requires compliance with all conditions of this Water Quality Standards Certification. Order No. 200-0017-DWQ is available at www.swrcb.ca.gov/resdec/wqorders/2003/wqo/wqo2003-0017.pdf

Should there be any questions, please contact Adam Fischer at (951) 320-6363, or Mark Adelson at (951) 782-3234.

Sincerely,



GERARD J. THIBEAULT
Executive Officer

cc: U. S. Army Corps of Engineers, Los Angeles Office – Dan Swenson
State Water Resources Control Board, OCC – Erik Spiess
State Water Resources Control Board, DWQ-Water Quality Certification Unit –
Nancy Dagle
U.S. EPA, Supervisor of the Wetlands Regulatory Office WTR – 8 – Tim Vendlinski
Clean Water Now! – Roger Butow

APF:401/certifications/Newport dunes maint~ 302006-31

